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SUBJECT: ITALY: BERLUSCONI HITS STRONG HEADWINDS

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Classified By: Ambassador Ronald P. Spogli for reasons 1.4 (b) and (d).

SUMMARY

¶1. (C/NF) After a very strong first month in office, PM Berlusconi's political honeymoon has been upset by prosecutors accelerating proceedings in criminal cases pending against him. These proceedings, leaked wiretaps, as well as the probability of further leaks have Berlusconi insiders concerned. The political furor over legislative proposals to block these investigations has distracted the public and Italy's politicians from progress on needed reforms but has not reduced Berlusconi's popularity, according to recent opinion polls. The strong prospect that legislation will be approved granting Berlusconi criminal immunity by the end of July may reduce his legal risks, but his political standing and ability to accomplish his national agenda could suffer setbacks. END SUMMARY.

A SURPRISE CHANGE IN THE LEGISLATIVE AGENDA

¶2. (C/NF) Soon after his May 8 swearing in, PM Berlusconi started delivering on campaign promises to reduce taxes and increase public security, propelling his approval ratings above sixty percent and earning him the grudging support of many opposition voters and even parts of a normally hostile press (REF A). On June 17, Berlusconi attached an amendment to a security decree pending in the Senate that would freeze trials on "lesser crimes" committed before June 30, 2002 (REF B), a provision that would reportedly suspend at least one case against Berlusconi. The press aggressively attacked Berlusconi for attending to his personal affairs; Democratic Party (PD) leader Walter Veltroni announced the end of dialogue with Berlusconi; and several Forza Italia (FI) members of parliament told Poloff they were confused by Berlusconi's timing when there was much on the political agenda yet to be accomplished. Commentators were ready to declare Berlusconi's honeymoon over.

¶3. (C/NF) The Senate ultimately approved the amendment freezing certain criminal cases as well as the underlying decree, passing it the Chamber of Deputies for consideration. The self-governing Superior Council of the Magistracy (CSM) objected, suggesting the provision was unconstitutional. President Napolitano gave the CSM an unusual rebuke by telling them they were speaking out of turn and that pronouncing on constitutionality was the purview of the Constitutional Court. Berlusconi has since introduced a modified version of a 2003 law, known as the "Lodo Schifani," that would give the top four institutional figures in Italy, including Berlusconi, criminal immunity for the time they are

in office. Passage of at least one of these measures is possible by the end of July. Berlusconi is also consulting with coalition partners on a bill to restrict the use of telephone intercepts.

¶4. (C/NF) Council of Ministers Undersecretary Paolo Bonaiuti told Poloff July 1 that discussion of these provisions has diverted the public's attention from legislative progress on Berlusconi's domestic agenda. However, a poll released July 2 indicates that 51 percent of Italians would vote for Berlusconi if elections were held now, versus 47 percent who actually voted for him in April. 45 percent support (an additional 10 percent are indifferent) the temporary freeze of less important criminal cases, including those pending against Berlusconi.

CHANGE CAUSED BY A NEWLY FULL LEGAL CASELOAD

¶5. (S/NF) The press reports there are at least three criminal cases pending against the PM. The reason for the timing of Berlusconi's moves became clear when prosecutors announced that Berlusconi could be required to testify eight times in July. Simultaneously, audio files of wiretappings of Berlusconi and other politicians were leaked to the press and published on the internet. Council of Ministers Undersecretary Gianni Letta told the Ambassador July 2 that additional embarrassing wiretappings could be released in the next few weeks.

¶6. (C/NF) Though the timing for the hearings was a surprise, the cases against Berlusconi are not new. In one case potentially coming to a head in the next few weeks, Berlusconi is accused of offering British corporate lawyer David Mills a \$600,000 bribe to hide potentially

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incriminating evidence. In another trial, Berlusconi is accused of fraud related to film rights for his private TV network, Mediaset. In the case currently receiving the most press due to leaked telephone intercepts, Berlusconi is accused of trading political favors with former state television (RAI) director Agostino Sacca, though much of the evidence surrounds Berlusconi's recommendations that certain showgirls should get greater airtime. (NOTE: Berlusconi would not be required to resign in the event of a criminal conviction, though he would likely come under considerable political pressure to do so. Convictions are not considered definitive until they are upheld on two appeals. In Italy, that can take several years. END NOTE.)

ITALY'S JUDICIARY: FOR MANY, A BROKEN SYSTEM

¶7. (C/NF) Transcripts of telephone intercepts related to criminal investigations are frequently leaked to the press, resulting in significant embarrassment to those involved and calls for reform of Italy's fiercely independent judiciary and of the practice of wiretapping. Rarely, if ever, is the source inside the judiciary who leaked the transcript discovered. Though Italy's judiciary is traditionally considered left-leaning, former PM and FM Massimo D'Alema told the Ambassador last year that the judiciary is the greatest threat to the Italian state. Despite fifteen years of discussions on the need for comprehensive judicial reform, no significant progress has been made. Italians, by and large, consider their judicial system broken, perhaps beyond repair, and have very little confidence that the system actually delivers justice.

WITH A LONG RECORD OF PURSUING BERLUSCONI

¶8. (C/NF) Berlusconi's legal troubles date back to before his entry into politics, though FM Frattini recently noted that Berlusconi has never been convicted definitively for

anything. Berlusconi frequently complains that prosecutors time the announcement of investigations to damage him politically: "justice by the clock." For example, Milan judges announced they were investigating Berlusconi for accounting fraud on April 26, 2005, the day Berlusconi was requesting a parliamentary vote of confidence. Only a month earlier and days before local elections, investigators announced they would charge Berlusconi with bribery involving film rights for his media company. Though there are several more examples, the most celebrated is the announcement Berlusconi was being investigated for tax fraud on the eve of the 2001 G8 Summit in Genoa.

COMMENT

19. (C/NF) Berlusconi's legal woes have dogged his fifteen years as a politician, though he has never received a conclusive conviction. With even some opposition members decrying the apparently political timing of the magistrates' most recent investigations and supporting judicial reform, it seems that politically motivated investigators may have gone too far. More importantly, President Napolitano's implied support for a bill conferring criminal immunity on, among others, Berlusconi means Berlusconi's legal problems could soon be laid to rest for the duration of his governing mandate. Despite this and buoyant opinion polls, additional revelations over the next month have some of his advisers worried. In short, Berlusconi has run into headwinds, and it is unclear if they have shifted back in his favor. In the extreme, it is possible to imagine a scenario where Berlusconi could lose considerable popularity and his ability to implement reforms, or even his power to govern. END

COMMENT.

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